

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
S&L TEEN HOSPITAL SHUTTLE)	File No. D122643
)	
Application to Modify and Reinststate the)	
License for Business Radio Service Station)	
WIJ767, Montrose, California)	

ORDER ON RECONSIDERATION

Adopted: April 18, 2002

Released: April 23, 2002

By the Commission:

I. INTRODUCTION

1. In this order, we dismiss a Petition for Reconsideration (Petition) filed on May 14, 2001, by James A. Kay, Jr. (Kay).¹ Kay seeks reconsideration of the *Memorandum Opinion and Order (SLTHS MO&O)* in which the Commission concluded that Kay had not established grounds for denying the above-captioned application.² The *SLTHS MO&O* resolved Kay's Application for Review³ of the *Order* by the Chief, Public Safety and Private Wireless Division (Division) of the Wireless Telecommunications Bureau (Bureau).⁴ The Application for Review was granted insofar as the Commission considered the merits of the case, but was denied in all other respects.⁵ For the reasons that follow, we dismiss the Petition as procedurally defective.

II. DISCUSSION

2. After a careful review of the reconsideration petition, it is found that Kay has failed to meet the Commission's procedural requirements for reconsideration.⁶ Section 1.106(b)(2) of the Commission's Rules provides that where the Commission has denied an application for review, a petition

¹ Kay Petition for Reconsideration (filed May 14, 2001) (Petition). James A. Kay, Jr. (Kay) is the licensee of Business Radio Service Station WIJ893 authorized on frequency pair 507/510.8875 MHz at locations in and around the Los Angeles, California, area.

² In the Matter of S&L Teen Hospital Shuttle, *Memorandum Opinion and Order*, 16 FCC Rcd 8153 (2001) (*SLTHS MO&O*).

³ Kay Application for Review (filed Feb. 25, 2000) (Application for Review).

⁴ In the Matter of S&L Teen Hospital Shuttle, *Order*, 15 FCC Rcd 3055 (WTB PSPWD 2000).

⁵ *SLTHS MO&O*, 16 FCC Rcd at 8153, 8155, 8157-58 ¶¶ 1, 5, 8-10.

⁶ In re Application of Kin Shaw Wong for Extension and Modification of Construction Permit for Unbuilt Station, KPTO (AM), Citrus Heights, California, *Memorandum Opinion and Order*, 12 FCC Rcd 6987, 6988 ¶ 3 (1997).

for reconsideration will be entertained only if one or more of the following circumstances is present: (1) the petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters, or (2) the petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not – through the exercise of ordinary diligence – have been learned prior to such opportunity.⁷ Kay offers neither new facts nor changed circumstances.⁸

3. It is settled Commission policy that petitions for reconsideration are not to be used for the mere reargument of points previously advanced and rejected.⁹ Reconsideration will not be granted merely for the purpose of again debating matters on which the Commission has already deliberated and decided.¹⁰ Yet, this is exactly what Kay has attempted to do. He reargues matters that the Commission previously considered and rejected in ruling on his Application for Review. For instance, Kay reiterates his assertion that Bureau staff is biased against him.¹¹ The Commission already resolved this matter in the *SLTHS MO&O* when it found that inadvertent procedural errors had occurred, not bias on the part of staff.¹² In the Petition, Kay repeats his allegation that the license for Station WIJ767 cancelled automatically for permanent discontinuance of operations.¹³ However, no new information is offered to substantiate this assertion.¹⁴ Kay merely repeats statements he offered previously in the Application for Review.¹⁵ Finally, Kay's contentions that an unauthorized transfer of control occurred in SLTHS' ownership and that the change in that ownership was intentionally concealed are merely repetitions of original allegations.¹⁶ The Commission concluded in the *SLTHS MO&O* that failure to report Leslie

⁷ 47 C.F.R. § 1.106(b)(2).

⁸ See *Battery City Car and Limousine Service, Inc., Memorandum Opinion and Order*, 14 FCC Rcd 21089 ¶ 2 (1999).

⁹ See *Mandeville Broadcasting Corp. and Infinity Broadcasting of Los Angeles, Order*, 3 FCC Rcd 1667 ¶ 2 (1988) (*Mandeville*); *M&M Communications, Inc., Memorandum Opinion and Order*, 2 FCC Rcd 5100 ¶ 7 (1987) (*M&M Communications*).

¹⁰ See *M&M Communications*, 2 FCC Rcd at 5100 ¶ 7. See also *WWIZ, Inc.*, 37 FCC 685 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F. 2d 824 (D.C. Cir. 1965).

¹¹ *SLTHS MO&O*, 16 FCC Rcd at 8154 ¶ 3; Petition at 2-3.

¹² *SLTHS MO&O*, 16 FCC Rcd at 8155 ¶ 5 n.13. See also *James A. Kay, Jr., Decision*, 17 FCC Rcd 1834, 1861-62 ¶¶ 88-91 (2002) (Commission finds no basis for concluding that the Bureau engaged in misconduct in prosecuting the revocation hearings of Kay and Marc Sobel).

¹³ Petition at 3-5.

¹⁴ See *R. Donnie Goodale, Memorandum Opinion and Order*, 7 FCC Rcd 7672 ¶ 3 (1992) (*Goodale*).

¹⁵ Kay again submits that -- as the equipment provider for the subject station and as a co-channel licensee -- he knows that operation on the subject station ceased for more than twelve months. Petition at 4. The Commission already concluded in the *SLTHS MO&O* that this was insufficient to support the allegation. *SLTHS MO&O*, 16 FCC Rcd at 8157 ¶ 8.

¹⁶ Petition at 6-7.

Miller's voluntary removal from the partnership appeared to be nothing more than inadvertence.¹⁷ Furthermore, the Commission found that the record was devoid of any motive to deceive.¹⁸ Again, no new facts or circumstances have been presented to support the assertions. Therefore, we dismiss Kay's Petition as repetitious.¹⁹

III. CONCLUSION AND ORDERING CLAUSE

4. Kay has been provided numerous opportunities to argue his case that the license for Station WIJ767 should be dismissed, denied or revoked. Prior to the instant Petition, he filed a petition to dismiss or deny SLTHS' license, a petition for reconsideration and revocation of SLTHS' license, and an application for review.²⁰ As noted by the Commission, Kay essentially sought the same relief and repeated the same allegations in these three pleadings.²¹ Again, in this fourth pleading, Kay brings no new arguments or facts to the proceedings.²² Therefore, his request for reconsideration of the Commission's *SLTHS MO&O* is dismissed.

5. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303, and Section 1.106(b)(2) of the Commission's Rules, 47 C.F.R. § 1.106(b)(2), the Petition for Reconsideration filed by James A. Kay, Jr. on May 14, 2001, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁷ *SLTHS MO&O*, 16 FCC Rcd at 8158 ¶ 10.

¹⁸ *Id.*

¹⁹ *See Goodale*, 7 FCC Rcd at 7672 ¶ 3.

²⁰ Kay Petition to Dismiss or Deny Application and Request to Cancel and Purge Authorization (May 14, 1999); Kay Petition for Reconsideration and Request for Initiation of License Revocation Proceedings (June 24, 1999)

²¹ *SLTHS MO&O*, 16 FCC Rcd at 8155 ¶ 6.

²² *Mandeville*, 3 FCC Rcd at 1667 ¶ 3.